IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

STATES OF WEST VIRGINIA; **NORTH DAKOTA**; **GEORGIA**; and **IOWA**; *et al.*, Plaintiffs, and **AMERICAN FARM BUREAU FEDERATION**, *et al.*, Intervenor-Plaintiffs, v. **U.S. ENVIRONMENTAL PROTECTION AGENCY**, *et al.*, Defendants, and **CHIKALOON VILLAGE TRADITIONAL COUNCIL**, *et al.*, Intervenor-Defendants.	Case No. 3:23-cv-00032-DLH-ARS Hon. Daniel L. Hovland

OPPOSITION TO MOTION TO STAY

State Plaintiffs have challenged an Amended Final Rule that purports to define "the waters of the United States" for purposes of the Clean Water Act's jurisdictional provision. 33 U.S.C. § 1362(7). Those five words have spurred decades of agency rulemaking efforts—often reflecting changed positions from administration to administration—and produced several Supreme Court decisions. *See* ECF No. 201-1 at 2-6. Despite all the ink spilled on the subject, clear guidance and true certainty have been slow in coming. The Supreme Court, at least, took a huge leap towards providing that clarity and certainty when it issued its decision in *Sackett v. EPA*, 598 U.S. 651

(2023), just over a year-and-a-half ago. This Court, too, is set to take another step towards clarity by deciding the motions for summary judgment that are presently pending here. But the Agencies now wish to suspend that decision indefinitely. *See* ECF No. 250. State Plaintiffs welcome the suggestion that the Agencies might be rethinking their approach, but that mere *possibility* of reassessment doesn't justify the extended stay that the Agencies now propose. The Court should thus deny their motion.

Although the "trial court has the inherent power to stay proceedings," the party requesting such a stay still "must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else." *United States v. Minnkota Power Co-op., Inc.*, 831 F. Supp. 2d 1109, 1118 (D.N.D. 2011). Other factors to consider in deciding whether to issue a stay "includ[e] the conservation of judicial resources, maintaining control of the court's docket, providing for the just determination of cases, as well as the potential for duplicative efforts and wasted resources of the parties and hardship to the party opposing the stay." *Tovar v. Essentia Health*, 342 F. Supp. 3d 947, 956–57 (D. Minn. 2018).

The Agencies have not shown any "hardship or inequity." Instead, they suggest that the stay would "allow Defendants to fully brief incoming leaders." ECF No. 250 at 2. "This reason, however, reflects only a pressing need for defendants to expedite briefing of incoming agency leadership and personnel, not a pressing need for a stay in this case." *Asylumworks v. Mayorkas*, No. 20-CV-3815, 2021 WL 2227335, at *6 (D.D.C. June 1, 2021). The motions for summary judgment are fully briefed and ready for decision. No oral argument is currently scheduled, and the Court did not require oral argument to decide similar issues on the motion for preliminary injunction. Once the summary-judgment motions are decided, the proceedings before this Court

may be over. In short, there's no imminent decision that needs to be made by "incoming leaders," and no actual event that warrants a stay. *Contrast with Brady Campaign to Prevent Gun Violence v. Salazar*, 612 F. Supp. 2d 1, 10 (D.D.C. 2009) (cited by Defendants) (noting that the court had granted agency defendants a two-week extension of the briefing schedule where the agency defendants had not yet filed their response to a pending motion for preliminary injunction). And especially in a post-*Loper Bright* world, the Agencies' views of the statutory and constitutional questions implicated here carry less relevance, anyway. *See* ECF No. 233 at 5-8; *cf. Pals v. Wkly.*, 12 F.4th 878, 883 (8th Cir. 2021) (declining to stay case for development of potential facts that would be "irrelevant" to pending motion for summary judgment).

In contrast to the lack of real benefits for the Agencies, the harm to State Plaintiffs is plain: if this case is stayed, the Plaintiff States (and the entire regulated community, for that matter) will still be deprived of essential clarity on the purely legal issues raised by the Amended Final Rule. State Plaintiffs have aggressively pursued firm answers on these issues for years. *See North Dakota v. EPA*, No. 3:15-CV-59, 2015 WL 7422349, at *4 (D.N.D. Nov. 10, 2015) (denying Agencies' request for stay in 2015 challenge to "waters of the United States" rule). A stay will only leave them in the dark for that much longer. "This frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government." *Talk Am., Inc. v. Michigan Bell Tel. Co.*, 564 U.S. 50, 69 (2011) (Scalia, J., concurring). Further, while State Plaintiffs recognize that the existing preliminary injunction mitigates some of the harm they might otherwise face, they are still deprived of the ultimate remedy they seek for this unlawful and unconstitutional rule—vacatur. *See* ECF No. 201-1 at 53-54.

The Agencies do not explain why any of the other factors would favor a stay here, either. Although they suggest a stay could "conserve judicial resources" and "promote the efficient and

orderly disposition of this case," ECF No. 250 at 2, just the opposite appears to be true. The parties have already submitted hundreds of pages of briefing on these issues; the Court has likewise already written extensively on the questions at hand and presumably already devoted attention to the pending motions. The case will almost certainly be disposed of the moment the Court issues its decision on summary judgment. On the other hand, waiting for some indefinite time while the Agencies decide if they will take some other position—even though there's no concrete indication at this time that they will—ensures only that this case will linger on the docket for that much longer, potentially wasting all the work.[*] It would serve everyone better to issue a decision now, considering how thoroughly the parties have vetted them.

Lastly, it makes no difference that some other related actions have been stayed. Those motions were unopposed. *See* Order at 1, *Kentucky v. EPA*, 3:23-cv-00007 (E.D. Ky. Feb. 10, 2025), ECF No. 90 ("The Plaintiffs do not object to a brief stay in this matter."); Order at 1, *Texas v. EPA*, No. 3:23-cv-00017 (S.D. Tex. Feb. 4, 2025), ECF No. 136 ("Before the court is the defendants' unopposed motion to stay the case."); Order at 1, *White v. EPA*, No. 2:24-cv-00013 (E.D.N.C. Jan. 29, 2025), ECF No. 70 ("The motion is not opposed by Plaintiff."). Whatever might have led those parties to agree to a stay in those cases, States Plaintiffs view their interests here differently. And deciding the questions presented in this case will not prejudice those cases in any discernible way. If anything, a decision here could serve as an important bellwether. In fact, deciding the pending cross-motions for summary judgment could even moot those challenges (if the Amended Final Rule were to be vacated), thus serving the interests of "judicial efficiency" across the board.

[*] Plaintiffs States recognize that these factors could apply differently if the Agencies indicated that they are, in fact, dropping their defense of this suit and then taking steps to rescind the Amended Final Rule in favor of a new approach.

For all these reasons, Plaintiff States respectfully oppose the Agencies' motion for stay and request that the Court deny it.

Respectfully submitted,

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